

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**ROBERT WAYNE DECKER,**

**Petitioner,**

**v.**

**Civil Action No. 2:10cv80**

**ADRIAN HOKE, Warden,**

**Respondent.**

**ORDER**

It will be recalled that on October 20, 2010, Magistrate Judge John S. Kaull filed his Report and Recommendation (“R&R”) (Doc. 14), wherein the petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the R&R. No objections to the Magistrate Judge’s R&R have been filed. Accordingly, the Court will review the Magistrate’s R&R for clear error.<sup>1</sup>

Upon examination of the report from the Magistrate Judge, it appears to this Court that the petitioner’s Petition for Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254, is untimely. The Court, upon a review for clear error, is of the opinion that the R&R accurately reflects the law applicable in this case. Therefore, it is

**ORDERED** that Magistrate Judge Kaull’s R&R (Doc. 14) be, and the same hereby is, **ADOPTED**. Accordingly, it is

**ORDERED** that the petitioner’s Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 (Doc. 1) be, and the same hereby is, **DENIED** as untimely filed. It is further

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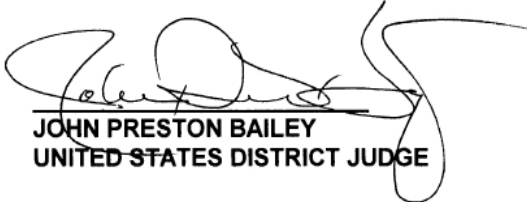
<sup>1</sup>The failure of a party to object to a Report and Recommendation waives the party’s right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See ***Wells v. Shriners Hospital***, 109 F.3d 198, 199-200 (4th Cir. 1997); ***Thomas v. Arn***, 474 U.S. 140, 148-153 (1985).

**ORDERED** that the above-styled action be, and the same hereby is, **DISMISSED WITH PREJUDICE** and **STRICKEN** from the docket of this Court. It is further

**ORDERED** that, pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000))).

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

**DATED:** November 24, 2010.



JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE